

App. No. 10/708,124  
Amendment dated February 3, 2006  
Reply to Office action of August 3, 2005

## **REMARKS**

### ***Rejections under 35 U.S.C. § 103***

Claims 1-11; Akahane et al. (*Applied Physics Letters*) in view of Srinivasan and Painter (*Optics Express*)

Claims 1-11 have been rejected as being obvious over Akahane et al., "Design of a channel drop filter by using a donor-type cavity with high-quality factor in a two-dimensional photonic crystal slab," *Applied Physics Letters*, Vol. 82, No. 9, March 3, 2003, pp. 1341-1343, in view of Srinivasan and Painter, "Momentum space design of high-Q photonic crystal optical cavities," *Optics Express*, Vol. 10, No. 15, July 29, 2002, pp. 670-684.

Applicants point out that the publication date of the Akahane et al. paper is, as noted in the upper right-hand corner of the paper, March 3, 2003. The priority date of the present application is February 10, 2003.

Accordingly, it is respectfully submitted that the Akahane et al. paper would not be available as prior art under 35 U.S.C. § 102, and therefore is not available under 35 U.S.C. § 103. Consequently, the rejection of claims 1-11 is improper.

The Akahane et al. paper was submitted for the Examiner's consideration as Cite No. O2 in Applicants' IDS filed May 17, 2004, which unfortunately implied that the Akahane et al. paper was "prior" art.

Unfortunately again, Cite Nos. O3 and O4, "Investigation of high-Q channel drop filters using donor-type defects in two-dimensional photonic crystal slabs," and "High-Q photonic nanocavity in a two-dimensional photonic crystal," as well as Cite Nos. F2 and F3, Japanese Unexamined Pat. App. Pub. No. 2003-279764, and Int'l. Pat. App. Pub. No. PCT/JP03/03762, were also cited in Applicants' IDS of May 17, 2004, yet have publication dates that are *not* more than one year prior to the U.S. filing date of the instant application.

Applicants now realize that Cite Nos. O2, O3, and O4, together with Cite Nos. F2 and F3, should not have been submitted in an IDS. It is hereby noted for the record that these just-enumerated references are *not* prior art with respect to the present application. Applicants and Applicants' undersigned representative regret any inconvenience imposed on the Examiner by this oversight in having submitted these references to the Office.

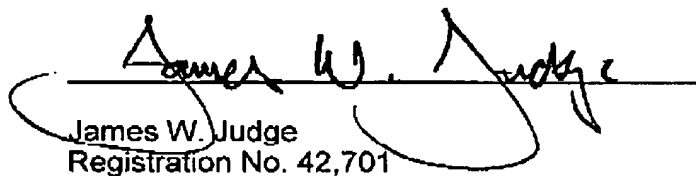
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A response to this Office Action was due by November 3, 2005, and consequently a Petition for Extension of Time, along with Credit-Card Payment Form PTO-2038, is attached hereto. Please consider this reply as timely filed.

Accordingly, Applicant courteously urges that this application is in condition for allowance. Reconsideration and withdrawal of the rejections is requested. Favorable action by the Examiner at an early date is solicited.

Respecttully submitted,

February 3, 2006

  
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